



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

TEXAS ORTHOPEDIC HOSPITAL
c/o HOLLOWAY & GUMBERT
3701 KIRBY DRIVE, SUITE 1288
HOUSTON TX 77098-3926

Carrier's Austin Representative Box
19

MFDR Date Received
March 11, 2005

Respondent Name

AMERICAN HOME ASSURANCE CO

MFDR Tracking Number

M4-05-5106-02

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "...To date, a total of \$11,647.22 has been paid by your company...Your company appears to have ignored the stop-loss rule by paying this claim using the per-diem reimbursement methodology, and taking a 10% discount pursuant to a First Health PPO contract requiring payment @ 90% of TWCC rates. Under Rule 134.401(c)(6) of the acute care inpatient hospital fee guidelines of the TWCC...this claim would be reimbursed at the stop-loss rate of 75% as the total audited charges exceed the minimum stop-loss threshold of \$40,000.00 resulting in a reimbursement of \$43,463.37. An additional discount of 10% pursuant to the First Health PPO contract would result in a final reimbursable amount of \$39,117.03. Based on the clear wording of the rules of the TWCC, the above-referenced SOAH decisions, and the First Health PPO contract, your company is liable for an additional sum owed our client in the amount of \$27,469.81..."

Amount in Dispute: \$27,469.81

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "The provider has failed to meet its burden of proof to establish that its charges and the amount requested are 'fair and reasonable,' and comply with Section 413.011 (b) of the Texas Labor Code and Commission rules. The carrier's reimb complies with the requirements of section 413.011(b) of the Texas Labor Code and commission rules and is 'fair and reasonable'."

Response submitted by: Broadspire

Respondent's Supplemental Position Summary: "This issue in this case is in regard to Texas Orthopedic Hospital entitlement to additional reimbursement for facility charges...The total reimbursement by the carrier was \$11,647.22. ..The carrier's argument is that the billing submitted does not comply with the stop loss rule. Since the stay does not fall under the stop loss rule, the carrier is only required to make reimbursement per diem as required by Section 134.401(c)(1)...The billing submitted by the provider does not support payment under the stop loss rule...The provider has failed to meet its burden of proof to show that his stay was unusually extensive or costly, in accordance with the rule...The claimant had lumbar surgery. This is a major procedure, but there is nothing to suggest any unusually extensive or costly services associated with this admission. Since the procedure is not unusually extensive or costly it does not fall under the stop loss rule...The claimant was in the hospital for 3 days...The total reimbursement for the stay should have been \$16,017.20. The provider would be

entitled to reimbursement for implants at cost plus 10%, per TWCC rule 134.401(4) (A) (i). The provider is required to submit proof of cost of implants. At this time, the carrier has received no submission of proof in order to calculate the correct reimbursement for implants...The provider charged for multiple items that no documentation was received to substantiate ...”

Response Submitted by: Broadspire

Respondent’s Supplemental Position Summary: “...Carrier files this supplemental response pursuant to DWC’s January 29, 2013 notice providing Carrier the opportunity to do so in light of the opinion in *Texas Mutual Ins. Co. v. Vista Comm. Med Ctr.*, 275 S.W.3d 538 (Tex. App.-Austin 2008, pet. denied). The inpatient hospital facility services provided by Texas orthopedic Hospital (Requestor) were not unusually costly and unusually extensive. Therefore, Requestor is not entitled to reimbursement under the stop-loss exception but should instead be reimbursed under the standard per diem reimbursement method...Requestor is not entitled to reimbursement under the stop-loss exception because it has not demonstrated that the services it provided were unusually extensive and unusually costly. In this case, the surgery was a lumbar fusion with a three-day stay. Of the total billed charges of \$57,951.16, over half the bill, or \$34,088 was for pass-through items consisting of implants. ...The records show that nothing unexpected or unusual occurred during either the surgery or subsequent inpatient stay and that there were no co-morbidities, complications, or infections that required the requestor to provide unusually extensive and costly services. The Operative Report ...states, COMPLICATIONS: Intraoperative complications: none. Spinal cord stimulation of pedicle screws all normal...In short, Requestor has not met its burden of proof...”

Response Submitted by: Stone Loughlin & Swanson, LLP

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
March 12 through 15, 2004	Inpatient Hospital Services	\$ 27,469.81	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers’ Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital for the date of admission in dispute.
 - Effective July 13, 2008, the Division’s rule at former 28 Tex. Admin. Code § 134.401 was repealed. The repeal adoption preamble specified, in pertinent part: “Section 134.401 will continue to apply to reimbursements related to admissions prior to March 1, 2008.” 33 *TexReg* 5319, 5220 (July 4, 2008). Former 28 Tex. Admin. Code § 134.401(a) (1) specified, in pertinent part: “This guidelines shall become effective August 1, 1997. The Acute Care Inpatient Hospital Fee Guideline (ACIHFG) is applicable for all reasonable and medically necessary medical and/or surgical inpatient services rendered after the Effective Date of this rule in an acute care hospital to injured workers under the Texas Workers’ Compensation Act.” 22 *TexReg* 6264, 6306 (July 4, 1997).
3. Dispute M4-05-5106-01 was originally decided on June 1, 2005 and subsequently appealed to a judicial hearing at the 98th Judicial District under Cause No.: D-1-GN-08-000266. This dispute was then remanded to the Texas Department of Insurance, Division of Workers’ Compensation (TDI-DWC) pursuant to a December 1, 2011 Judicial District order of remand. As a result of the remand order, the dispute was re-docketed at medical fee dispute resolution and is hereby reviewed.
4. The services in dispute were reduced / denied by the respondent with the following reason codes:
Explanation of Benefits
 - C – negotiated contract price \$335.40

- O – denial after reconsideration \$0.00
- S – supplemental payment \$8,628.62
- **Bill notes:** no additional allowance recommended as this claim was allowed at per diem rate plus implants. This bill only exceeds \$40,000 with the implants included. If the implants were taken out then the bill would not exceed \$40,000 therefore this bill will not be allowed according to stop loss.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection." 28 Texas Administrative Code §134.401(c) (6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c) (6) (A) (i) states "to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "Audited charges are those charges which remain after a bill review by the insurance carrier has been performed." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c) (6) (A) (v); therefore the audited charges equal \$57,951.16. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c) (6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c) (6).
4. 28 Texas Administrative Code §134.401(b)(2)(A) titled General Information states, in pertinent part, that "The basic reimbursement for acute care hospital inpatient services rendered shall be the lesser of:

- (i) a rate for workers' compensation cases pre-negotiated between the carrier and the hospital;
- (ii) the hospital's usual and customary charges; and
- (iii) reimbursement as set out in subsection (c) of this section for that admission

In regards to a pre-negotiated rate, the services in dispute were reduced in part with the explanation "negotiated contract price." No documentation was provided to support that a reimbursement rate was negotiated between the workers' compensation insurance carrier AMERICAN HOME ASSURANCE CO and Texas Orthopedic Hospital prior to the services being rendered; therefore 28 Texas Administrative Code §134.401(b)(2)(A)(i) does not apply.

In regards to the hospital's usual and customary charges in this case, review of the medical bill finds that the health care provider's usual and customary charges equal \$57,951.16.

In regards to reimbursement set out in (c), the division determined that the requestor failed to support that the services in dispute are eligible for the stop-loss method of reimbursement; therefore 28 Texas Administrative Code §134.401(c)(1), titled Standard Per Diem Amount and §134.401(c)(4), titled Additional Reimbursements apply. The division notes that additional reimbursements under §134.401(c) (4) apply only to bills that do not reach the stop-loss threshold described in subsection (c) (6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c) (3) (ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission." The length of stay was three days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of four days results in an allowable amount of \$3,354.00.
- 28 Texas Administrative Code §134.401(c) (4) (A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)." Review of the requestor's medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Code	Itemized Statement Description	Cost Invoice Description	UNITS / Cost Per Unit	Total Cost	Cost + 10%
278	Syn sp nut 11mm 2-4980	TI nut 11mm width across flats	6 @ \$31.52	\$189.12	\$208.03
	Syn sp rodsoft 75 4981	6.0mm TI soft rod 75mm	2 billed; invoice for 1 @ \$92.63	\$92.63	\$101.89
	Syn sp scr side 7x40	7.0mm TI side-opening screw 40mm	6 billed; invoice for 5 @ \$373.45	\$1867.25	\$2053.98
	Syn sp trans 498011	TI collar w/ grooves	6 @ \$80.02	\$480.12	\$528.13
	Stimul bne spfplus2dm	Spf-XL II b,/DW	1 @ \$3975.00	\$3975.00	\$4372.50
	Bne chp 30c 4-10 10015	Demin cort/canc chips 30cc	2 @ \$387.00 each	\$774.00	\$851.40
	Bne dbx putty 10c 0381	No matching invoice	NA	NA	NA
TOTAL ALLOWABLE				\$8115.93	

- 28 Texas Administrative Code §134.401(c) (4) (C) states "Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed \$714.79/unit for Fentanyl. The requestor did not submit documentation to support what the cost to the hospital was for this item billed under revenue code 250. For that reason, reimbursement for this item cannot be recommended.

The total reimbursement set out in the applicable portions of (c) results in \$3,354.00 + \$8115.93 for a total of \$11,469.93.

Reimbursement for the services in dispute is therefore determined by the lesser of:

§134.401(b)(2)(A)	Finding
(i)	Not Applicable
(ii)	\$57,951.16
(iii)	\$11,469.93

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c) (1) and (4) represents the lesser of the three considerations. The respondent issued payment in the amount of \$11,647.22. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

For the reasons stated above, the division concludes that the services in dispute are not eligible for the stop-loss method of reimbursement, that a pre-negotiated rate does not apply, and that application of 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*, results in the total allowable reimbursement. Based upon the documentation submitted, the requestor's Table of Disputed Services, and reimbursement made by the respondent, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the disputed services.

Authorized Signature

_____	_____	April 3, 2013
Signature	Medical Fee Dispute Resolution	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.